

**11/7/78**

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# WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
Memo	Press & Owen to Pres. Carter, w/attachments 10 pp., re:Correspondence w/Foreign Head of State	11/3/78	A
Memo	Owen to Pres. Carter, w/attachments 2 pp., re:MTN crisis <i>8 pp. opened per RAC NLC-126-14-50-1-0 NLC-126-14-50-2-9 , 6/27/13</i>	11/4/78	A

## FILE LOCATION

Carter Presidential Papers-Staff Offices, Office of Staff Sec.-Presidential Handwriting File 11/7/78 Box 108

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THE WHITE HOUSE  
WASHINGTON

11/10/78

Stu Eizenstat  
Jack Watson

The attached was returned in  
the President's outbox today  
and is forwarded to you for  
your information. The signed  
original has been given to  
Bob Linder for appropriate  
handling.

Rick Hutcheson

cc: Bob Linder

5681

96 11/10/78

THE WHITE HOUSE

WASHINGTON

November 2, 1978

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT *Stu*  
JACK WATSON *Jack*

SUBJECT: Campbell Memorandum on  
Civil Service Reform

Attached please find a memorandum from CSC Chairman Scotty Campbell in which he requests that you send a memorandum to department and agency heads supporting implementation of civil service reform. Scotty hopes to meet with Cabinet members and selected agency heads to discuss implementation, and believes that a memorandum from you supporting his efforts would be extremely helpful.

Winning the legislative victory was just one step in truly accomplishing civil service reform. The most difficult task, that of implementing these reforms throughout the government, lies ahead. We recommend you sign the attached memorandum to agency heads, which Jim Fallows' office has approved.

We will continue to work with Scotty on implementation, who will undoubtedly come forward with other proposals for how your personal involvement can be instrumental in securing reform of the civil service.

# THE WHITE HOUSE

WASHINGTON

## MEMORANDUM FOR THE

### HEADS OF DEPARTMENTS AND AGENCIES

On October 13, I signed the Civil Service Reform Act of 1978. The Reform Act provides us with the tools to make major changes in the management of our government. However, the Act will not cause those changes to occur automatically. In very large part, our success will depend on your efforts to implement the Act's purposes vigorously and effectively.

As you know, I gave a great deal of personal attention to developing the reform legislation and supporting it in Congress. When I signed the bill at the White House, I publicly pledged "to implement the civil service reforms with efficiency and dispatch." I intend to give the same close personal attention to implementing the Reform Act as I did to its development and passage. To assist me, I am asking Scotty Campbell, Chairman of the Civil Service Commission, to meet with each of you as soon as possible to review implementation objectives and needs. We must start immediately in translating the statutory mandate into reality.

Let me call your attention to some of the major features of the Reform Act that I believe offer significant prospects for improving the way we carry out the responsibilities with which we are charged. The Act:

- Creates a Senior Executive Service as a government-wide corps of more than 8,000 top executives to manage Federal programs of all types.
- Bases the compensation of Senior Executives and GS13-15 managers on individual and organizational performance.
- Provides the statutory framework for new systems of performance appraisal within agencies as a basis for advancement and retention of employees.

- Gives managers throughout government more flexibility and authority in all phases of personnel management so they can hire, motivate, reward, and discipline employees as necessary to carry out their programs.
- Provides employees with fairer protection of their legitimate rights, including protection against political abuse.

Implementation of these and other features of the Reform Act call for your personal leadership and commitment. I know that I can count on you in this important effort and that you will give Scotty Campbell your full cooperation and support.

X Jimmy Carter

ID 785681

THE WHITE HOUSE

WASHINGTON

DATE: 02 NOV 78

FOR ACTION:

INFO ONLY: THE VICE PRESIDENT

JERRY RAFSHOON

SUBJECT: CAMPBELL MEMO RE CIVIL SERVICE REFORM

*Being done  
retype*

+++++

+ RESPONSE DUE TO BERT CARP +

+ BY: +

+++++

ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: ( ) I CONCUR. ( ) NO COMMENT. ( ) HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
<input checked="" type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
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	EIZENSTAT
	JORDAN
	KRAFT
	LIPSHUTZ
	MOORE
	POWELL
	WATSON
	WEXLER
	BRZEZINSKI
	MCINTYRE
	SCHULTZE

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	BOURNE
	BUTLER
	H. CARTER
	CLOUGH
	COSTANZA
	CRUIKSHANK
	FALLOWS
	FIRST LADY
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	SCHNEIDERS
	VOORDE
	WARREN
	WISE



MEMORANDUM FOR THE HEADS OF  
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THE WHITE HOUSE  
WASHINGTON

11/6/78

Zbig Brzezinski/Henry Owen

The attached was returned in the President's  
outbox today and is forwarded to you for  
appropriate handling.

Rick Hutcheson

cc: The Vice President  
Stu Eizenstat  
Frank Moore  
Jim McIntyre  
Charlie Schultze

CONFIDENTIAL ATTACHMENT

THE WHITE HOUSE  
WASHINGTON

Mr. President:

OMB and Eizenstat concur  
with Option #I.

Hamilton has no comment.

Rick/Bill

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Memo	Owen to Pres. Carter, w/attachments 2 pp., re: MTN crisis 891 Paden RAC NLC 126-14-50-1-0 NLC 126-14-50-2-7 KS 6/24/12	11/4/78	A

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THE SPECIAL REPRESENTATIVE FOR  
TRADE NEGOTIATIONS

WASHINGTON

November 1, 1978

CONFIDENTIAL

MEMORANDUM FOR THE PRESIDENT

FROM: Robert S. Strauss *RSS.*

SUBJECT: Expiration of the Authority to Waive  
Countervailing Duties.

Very soon we must decide what course of action should be taken to avert a serious confrontation with our trading partners arising from the expiration on January 2, of the authority of the Secretary of Treasury to waive the imposition of countervailing duties.

If no action is taken, Treasury, on January 3, must begin assessing countervailing duties on \$607 million (1977 value) worth of imports from seventeen countries. The collection of these duties would seriously jeopardize a satisfactory conclusion of the Tokyo Round, and could result in a trade war with the European Community (EC), putting at risk U.S. exports, particularly of agricultural products.

After we had many discussions with the House-Senate leadership and appropriate Committee members, you proposed to Congress legislation that would have extended the waiver authority until August 1, 1979. Although variations of this legislation were passed twice by the Senate and once by the House it was not possible, in the closing hectic days of the Congress, to obtain final approval before adjournment. In view of this, the EC has refused, in effect, to make any major negotiating decisions until the threat of countervailing duties is removed. Their position is "get the waiver and we conclude the negotiations". Our position is "let's conclude and we'll go to Congress in January and get a waiver while the agreements are being considered; you do nothing to formally accept on your side until our Congress delivers".

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BY KS NARA DATE 6/24/13

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If we impose countervailing duties, the Europeans may well become even more intransigent, and it would be politically impossible for either we or the Europeans to back down. This means risk of not just loss of the MTN but escalating hostility that would threaten to interfere with normal trade.

As I see it, we now have two options to avert a serious confrontation and to keep the negotiations moving toward a satisfactory conclusion to be submitted to the Congress next spring. They are:

OPTION I: Suspension of Liquidation of Countervailing Duties Pending Consideration by Congress of MTN Implementing Legislation.

Current law permits the Secretary of the Treasury to "suspend liquidation" (i.e., temporarily postpone final collection of duties and accept a bond to cover any potential liability). Under this option, the Secretary would "suspend liquidation" of the duties, pending completion of the negotiations and enactment by the Congress of implementing legislation including a retroactive forgiveness of any duty liability.

This would be a political gesture by us and might prove enough to keep the negotiations going forward. However, suspension of liquidation preserves the trade's liability until the Congress forgives the additional levies retroactively (perhaps by provision in the MTN implementing legislation). Failure to remove possible liability could have a significant adverse impact on European agricultural exports to the U.S.. Accordingly, there is serious question as to whether this course of action represents a satisfactory solution to the problem from the European point of view.

I believe it could prove adequate but (a) it would require some selling by you, me, Mike and Cy backed by the leadership of the Senate and House, and (b) there is a clear risk of rejection by the Europeans.

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- 3 -

OPTION II: Declaration of National Emergency and Exercise of Presidential Authority Under the International Emergency Economic Powers Act (50 USC 1701). -- (This is an "extreme", or at best, "high-profile" action.)

The International Emergency Economic Powers Act (50 USC 1701) authorize the President to "regulate ....importation of....any property in which any foreign country or national thereof has any interest" in order to "....deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat."

This legislation was enacted by Congress in 1977 to revise and delimit Presidential authority to regulate international economic transactions during wars or national emergencies. The antecedent of this authority was used, among other occasions, by President Johnson to place controls on U.S. direct investment abroad in 1968, by President Nixon to impose a 10-percent surcharge on U.S. imports from August to December 1971, and most recently by President Ford to extend controls and regulations issued under the Export Administration Act when that act lapsed temporarily between September 30, 1976 and June 22, 1977.

I believe that events in the next few weeks would provide an adequate basis for your exercising this authority. You could announce shortly your decision to utilize this authority to suspend the imposition of countervailing duties for a period of sixty days to afford Congress sufficient time to consider the results of the Tokyo Round and to enact such legislation as may be required to implement the negotiations, provided that the negotiations are completed satisfactorily by the end of the year. You would announce that you would take the action by January 2 if we had a trade package to take to Congress.

This option has the advantage of completely resolving the issue, thereby depriving our trading partners of any excuse for causing a breakdown or delay in the negotiations.

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

- 4 -

However, domestically, it would be criticized by the Republicans as well as many others as an improper abuse of emergency powers.

Either Option I or II will require careful planning and close consultation with the Congress as well as officials of other governments, prior to its execution. Inaction is not an acceptable alternative, nor is violation of the law by the Secretary of the Treasury. Calling a special session of Congress is likewise extreme and undesirable.

It is my present intention to go to Paris, Bonn and Brussels on November 8, 9 and 10 to meet with Schmidt, Barre, Jenkins and others to try to move the negotiations into its final stages. We now could complete the deal with two weeks concentrated negotiating. While I am not counting on success, it is my hope that delivery of your and my assurances, backed by the Congress, on the waiver issue will permit the negotiations to go forward.

I need your guidance as soon as possible as to how we should proceed. I will call to see you, Stu and others you suggest, hopefully on Monday or Tuesday of next week.

~~CONFIDENTIAL~~



UNDER SECRETARY OF STATE  
FOR ECONOMIC AFFAIRS  
WASHINGTON

~~CONFIDENTIAL~~

November 3, 1978

MEMORANDUM FOR: AMBASSADOR HENRY OWEN  
From: Richard N. Cooper <sup>ENC</sup>  
Subject: Countervailing Duty Waiver

I have some comments which bear on Bob Strauss' memo to the President and his European trip.

-- First of all, we clearly have to try the straight-forward approach--suspension of liquidation--before considering declaration of an economic emergency. Strauss' memo seriously understates the legal and political risks of invoking the International Emergency Economic Powers Act to avoid collection of countervailing duties. Use of the IEEPA would be open to challenge in court, and Lee Marks sees at least a reasonable chance that a legal challenge would succeed. (His memo to you is attached.)

-- Second, European leaders are not concerned only about the possible collection of countervailing duties on January 3. They are deeply suspicious of U.S. intentions, and they fear that any concessions they make now will invite new Congressional demands after a package is "concluded" in December. Gundelach, who contends that he can make only one offer in agriculture, is especially worried about having to confront American "salami tactics."

-- Third, an approach to the new Congress for renewal of the waiver authority has an uncertain outcome and risks unacceptable amendments. An administrative solution is far preferable.

We should therefore look to a scenario for Strauss' trip to Europe that takes the following line:

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- 2 -

-- Action on January 3: Assure the Europeans that administrative measures (suspension of liquidation) will be taken to avoid collection of duties. We will agree to include retroactive forgiveness of any liability for payment of duties in the MTN implementing legislation (not in a separate waiver-renewal bill). Statements from Congressional leaders accepting this course of action would be very helpful.

-- U.S. negotiating tactics: Assure the Europeans that we will submit to the Congress for implementation an acceptable agreement we have concluded with them and strongly resist any Congressional pressures for renegotiation. It would be best if Strauss could speak for the President on this point. I recognize that Congress once it has the package and implementing legislation may want to make some changes, either through renegotiation or through interpretive domestic implementing legislation. But Strauss at least can assure the EC that the Administration will not initiate and will strongly resist any efforts to renegotiate.

If the Community will resume the negotiations on this basis, there is a chance of making the political decisions this year and finishing the talks very early in 1979.

Attachment:

Lee Marks memo to you

~~CONFIDENTIAL~~





DEPARTMENT OF STATE

Washington, D.C. 20520

MEMORANDUM

~~CONFIDENTIAL~~

November 2, 1978

TO: Ambassador Henry D. Owen  
Special Representative  
to the President

FROM: Lee R. Marks *[Signature]*  
Deputy Legal Adviser

SUBJECT: Countervailing Duty Waiver - International  
Emergency Economic Powers Act

Ambassador Strauss' memorandum fails to mention the possibility of a lawsuit challenging a Presidential declaration of emergency under the International Emergency Economic Powers Act (IEEPA). Any domestic manufacturer that competes with a product currently subject to the waiver would probably have standing to bring such a suit. It is difficult to assess the chances of success, but, for the reasons noted below, there is at least a reasonable chance that a legal challenge would succeed.

Congress passed the IEEPA to limit the President's power to rely on national emergencies to regulate foreign commerce. The emergency must be an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy or economy of the United States..." Here, the source of the emergency, arguably at least, is Congress' "decision" not to extend the President's authority.

To support the finding of an emergency, the President would presumably argue that absent the waiver, the MTN will fail, that a trade war or a

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ON KS NARA DATE 6/24/13

return to protectionism will ensue, and that this will threaten the U.S. economy.

This line of argument is hypothetical, speculative, and technical. A court might well find that such predictions of economic difficulty are too remote to meet the high standard required by Congress. It may also occur to a court, that the logical way to deal with a threatened emergency, if one exists, would be for the President to call Congress back in session to extend the waiver.

In similar cases, the courts have taken statutory standards seriously. For example, courts have refused in two recent cases to enjoin labor strikes under the Taft-Hartley Act because they were not convinced that the strikes imperiled the national health and safety, as required by that Act. One involved last winter's coal strike.

Two further notes:

Congress can, by concurrent resolution, override the President's action by terminating the emergency, as provided in the National Emergencies Act.

The IEEPA has extensive Congressional consulting and reporting provisions. The case will have to be made in detail when the emergency is declared.

The above is "worst case" thinking. The possibility of a lawsuit is of course only one factor to be weighed, with others -- but it is a factor that should be put before the President, and it emphasizes the need to support the invocation of the IEEPA -- if it is invoked -- with as strong a case as possible.





THE UNDER SECRETARY OF THE TREASURY  
FOR MONETARY AFFAIRS  
WASHINGTON, D.C. 20220

November 3, 1978

MEMORANDUM FOR THE HONORABLE HENRY OWEN  
SPECIAL REPRESENTATIVE TO THE PRESIDENT  
NATIONAL SECURITY STAFF

Subject: Expiration of the Authority to Waive  
Countervailing Duties (CVDs)

Bob Strauss' memo of November 1 suggests two options for dealing with the expiration problem on January 2:

1. Suspension of liquidation pending Congressional consideration of MTN legislation which would include retroactive extension of the waiver authority (thus requiring that importers post bonds instead of immediate assessment and payment of cvds).
2. Declaration of a national emergency to invoke the International Economic Emergency Powers Act.

We support option 1, but with an important modification. We continue to believe that the President should submit a separate waiver extension bill immediately upon convening of the new Congress (January 3, not when they actually meet later in the month).

Failure to submit a waiver extension bill would be regarded by the Europeans as a backward step. Indeed, the President has assured Giscard/Schmidt/Callaghan that he would do so and that he is confident that the Congress would pass such a bill. Asking the Europeans at this point to rely on retroactive application of the final MTN implementing legislation would significantly extend the period of uncertainty and thereby jeopardize the MTN. It would also inexplicably fail to build on the

fact that both houses of Congress would pass an extension bill next month, thereby heightening the doubts of the Europeans over both our sincerity and our ability to win Congressional support.

However, it is true that such a bill might become a vehicle for restrictive amendments which would also jeopardize the MTN. In that case, I believe that we could slow or halt action on it and fall back to relying on the MTN legislation itself. The Europeans would certainly share our interest in avoiding a "Christmas tree," and we would have made a maximum effort to extend the waiver.

Thus there are admittedly some significant risks involved in sending up two pieces of trade legislation next year. Nevertheless, we believe this course to be the least bad. If it is rejected by the Europeans as inadequate or if Congressional consultations strongly counsel against following through on it, we could then consider the possibility of invoking the IEEPA.

However, we have strong reservations about ever invoking the IEEPA. As Bob indicates, this is an extreme and high profile action.

As a matter of law, you would have to find that there is an unusual and extraordinary threat to the foreign policy or economy of the United States. Although no court has yet defined the circumstances which constitute an unusual or extraordinary threat, the legislative history emphasizes the need for a "real emergency" and proscribes the use of the authority for another purpose. Failure successfully to conclude the MTN itself would probably not satisfy the statutory standard.

Although we would be countervailing with respect to \$607 million of trade if the waiver authority expires (1977 date), a little less than half of that would relate to EC exports. The EC exports come principally from Denmark, the Netherlands, France and Italy. The duties would be approximately \$47 million on all the trade, and \$31 million with respect to EC products. Under present

circumstances, it would be hard to characterize the frictions or likely retaliation resulting from our countervailing as posing an unusual and extraordinary threat to our foreign policy or economy.

In addition to the legal difficulties, invocation of the IEEPA would weaken our negotiating position in the MTN and be extremely difficult to explain to the American public. If the preferred strategy fails, we would have to reassess the entire situation including the IEEPA -- though we are sure we would still have strong reservations over using it in these circumstances.



Anthony M. Solomon

EIZENSTAT COMMENT

THE WHITE HOUSE

WASHINGTON

November 5, 1978

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT *Stu*  
HOWARD GRUENSPECHT

SUBJECT: Strauss Memo on Countervailing Duty  
(CVD) Waiver Options

The European Community (EC) has made a major issue of our inability to secure final passage of legislation to extend the waiver on the imposition of CVD's beyond January 2, 1979 and is refusing to finalize the terms of the Multilateral Trade Negotiations (MTN) pending a satisfactory resolution of this problem. Although EC concern over CVD's is far out of proportion to the economic importance of these duties, there is a real danger that failure to adequately respond to this concern will result in a collapse of the MTN.

Ambassador Strauss' memo sets forth two options for a USG response on the CVD waiver issue. Under Option I, the Treasury would suspend liquidation of CVDs until Congress enacted an extension of the present CVD waiver, making this extension retroactive to January 2, 1979. Under this suspension of liquidation, the Treasury would require exporters to post a bond pending Congressional action on a waiver extension if the waiver were enacted.

Under Option II, you would declare a national emergency under the International Emergency Economic Powers Act (IEEPA) and use your authority under that Act to extend the waiver on the imposition of CVDs.

From the EC point of view, Option II is preferable. Under Option I, although no duties would be paid by exporters of subsidized products if Congress ultimately enacts a waiver extension with the retroactivity clause, these exporters would be required to post a bond that would be forfeited if Congress failed to act. Under Option II, exporters of subsidized products do not bear even a potential liability.

From our perspective, however, there are several strong arguments against Option II. First, this use of the IEEPA is likely to be viewed by Congress as inconsistent with the

intent of the law. A perception of high-handedness could stiffen opposition to the overall MTN package and also raises the possibility of legislative attempts to limit Presidential discretion in these matters. Second, the declaration of a national emergency for the purpose of extending the CVD waiver would expose you to severe criticism from those who wanted you to go this route in dealing with the dollar's slide. You cannot expect widespread support for this declaration of national emergency: very few people even understand the problem and on the face of the matter you would be acting on behalf of EC exporters of subsidized products. Finally, and most importantly, use of the IEEPA to extend the CVD waiver would adversely affect our efforts to stabilize the exchange value of the U.S. dollar. Under the IEEPA you can assume broad authority over foreign exchange and foreign credit transactions. Use of the IEEPA to achieve the relatively minor objective of extending the CVD waiver could be taken as an indication that you would not hesitate to invoke the IEEPA in defense of the dollar should the measures announced this past week prove to be unsuccessful, including the use of exchange and trade controls. The fear that exchange and trade controls may be just around the corner could accelerate the flight from the dollar if it starts to weaken for other reasons. Use of the IEEPA to extend the CVD waiver would also increase domestic pressure to use it in defense of the dollar by calling to the public's attention your powers under this Act.

In my opinion, the disadvantages of invoking the IEEPA (Option II) are extremely serious. Ambassador Strauss believes that "suspension of liquidation" (Option I) could be sufficient to get the MTN moving again if it is properly packaged and sold. I recommend that you instruct Ambassador Strauss to pursue Option I, giving him maximum latitude to package that option so as to maximize his negotiating leverage. If Bob is unable to get the Europeans to accept Option I we would then be in a position to more seriously consider Option II. But there is every reason to give Option I a chance before considering the much more risky (from a domestic perspective) steps under Option II.

THE WHITE HOUSE  
WASHINGTON  
11/7/78

Frank Moore

The attached was returned in  
the President's outbox. It is  
forwarded to you for your  
information.

Rick Hutcheson

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	FIRST LADY
	GAMMILL
	HARDEN
	HUTCHESON
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	PETTIGREW
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	SCHNEIDERS
	VOORDE
	WARREN
	WISE

	ADAMS
	ANDRUS
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	BERGLAND
	BLUMENTHAL
	BROWN
	CALIFANO
	HARRIS
	KREPS
	MARSHALL
	SCHLESINGER
	STRAUSS
	VANCE



done  
J

PHONE CALL ----- 4:15 p.m. TALKING POINTS

FOR: Maurice Dantin

Also mention John Hampton Stennis, 4th Dist.  
candidate -- HE WILL NOT BE PRESENT.

POINTS: A Democratic U.S. Senator will be a  
part of your team and thus can better serve  
the people of Mississippi.

Congratulate Dantin on helping unify all  
Democrats in Mississippi --- he has the  
support of your friends, Governor Finch,  
Senators Eastland & Stennis, and Co-Chairmen  
of the Party, Tom Riddell & Aaron Henry.

Thank them for all they did for you in 1976.  
Tell them you are counting on them in 1978  
again to do all they can to elect a Democratic  
team ---- GET-OUT-THE-VOTE --- All become  
campaign managers in next two days before  
election --- on Tuesday, Election Day, bring  
people to VOTE

NOTE: WHCA is assuming you will speak from your  
study phone, though I don't think it matters.

Wayne Edwards, Dantin's campaign manager,  
will actually be on the other end of the  
phone placing the call.